

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA**

IN RE: NATIONAL FOOTBALL
LEAGUE PLAYERS' CONCUSSION
INJURY LITIGATION III

No. 2:19-md-02323-AB

MDL No. 2323

THIS DOCUMENT RELATES TO:

Hon. Anita B. Brody

ALL CASES ON THE DOCKET

**APPLICATION OF WENDY R. FLEISHMAN
FOR PLAINTIFFS' CO-LEAD COUNSEL**

INTRODUCTION

Pursuant to this Court's Order of July 23, 2019 [Dkt.10760], Wendy R. Fleishman hereby respectfully applies to this Court to be appointed to the position of a Co-Lead Counsel in this next phase in *In Re: NFL Players Concussion Litigation III*, MDL No. 2323. I make this application to serve as Co-Lead, jointly with Brad Sohn, whose application is being filed today.

I very much welcome the opportunity to serve for the common benefit of the MDL Plaintiffs. As the Court is aware, the Court appointed Mr. Seeger and me to serve as Co-Lead in the *Riddell Helmet Manufacturers'* aspect of this case. Mr. Seeger has told Mr. Sohn and myself that because of his commitments to other serious matters, he will step down from that role and suggested that Mr. Sohn replace him in that role.

I certify that I will personally commit my time and energy, and that of key members of my firm and its staff, to this challenging and intensive task as a matter of highest priority. As discussed below, Lieff Cabraser Heimann & Bernstein is extremely well-suited to play a lead role in this MDL litigation. I respectfully submit, and this application endeavors to demonstrate, that I and my firm have the requisite criteria for

appointment to lead this MDL, as described in MDL Order No. 9: 1) willingness and ability to commit to a time-consuming process; 2) a commitment to the fair representation of the interests of the Plaintiffs in the coordinated actions; 3) the ability to work cooperatively with others; 4) extensive experience serving in leadership roles in mass tort/ products liability litigation; and, 5) access to sufficient resources to prosecute this litigation in a timely manner for the common interests of the Plaintiffs.

DISCUSSION

Lieff Cabraser's Involvement in the Ongoing Litigation

Lieff Cabraser represents more than three (300) players-Class members in the litigation before this Court. As the Court is aware, with this Court's supervision, Mr. Sohn and I have worked diligently to address concerns of many players who opted out of the litigation. We submitted extensive briefing in the opposition to both the NFL's Motion to Dismiss the Opt out cases and the Riddell helmet manufacturers' cases.

We have worked together with the other firms who have the majority of the *Riddell* cases, and have a proposal and a plan to reach a hopefully and efficiently conclusion in those matters. We have the support of the other attorneys in that litigation to serve before this Court in the third phase of the MDL litigation.

Lieff Cabraser's Experience, Qualifications and Resources

Lieff Cabraser is an AV rated 60 plus lawyer firm with a support staff of over 200, including nurses, investigators, statisticians, accountants and litigation support specialists.¹ Our offices in San Francisco, New York, Seattle and Nashville, provide a depth of resources always available in support of the *In Re Football Players Concussion*

¹ *U.S. News and Best Lawyers* have named Lieff Cabraser as a national "Law Firm of the Year" each year the publication has given the award, including the award in the category of Mass Torts Litigation/Class Actions - Plaintiffs in multiple years. *The American Lawyer* recently called Lieff Cabraser "one of the nation's premier plaintiff firms." *The National Law Journal* has named Lieff Cabraser to its Hot List as one of the top plaintiffs' law firms in the nation for fourteen years. In compiling the list, The National Law Journal examines recent verdicts and settlements and selects firms "representing the best qualities of the plaintiffs' bar and that demonstrated unusual dedication and creativity." Law360 has named Lieff Cabraser as one of the nation's "Most Feared" Plaintiffs' firms for the past two years. Legal 500 named Lieff Cabraser as its U.S. Mass Torts and Class Action Plaintiffs' Law Firm of the Year for 2014.

Litigation III.

Lieff Cabraser represents plaintiffs in complex and class action litigation in federal and state courts across the nation. Since 2001, I personally have served as Lead or Co-Lead counsel, or as a member of the Plaintiffs' Steering Committee, or as Lead Trial counsel in more than two dozen MDL and Joint Prosecution proceedings in federal and state courts across the country, in the substantive legal areas of defective medical devices, defective product design, manufacture, marketing and sales practices of medical devices, pharmaceutical drugs, and products. In addition, members of my firm, upon whom I rely, have served as court appointed class counsel and lead counsel or trial counsel in several hundred actions, many of which include medical device cases. The breadth and scope of our firm's experience as plaintiffs' advocates, as described in the Lieff Cabraser firm resume attached as Exhibit 1, is unparalleled.²

In many MDLs, we represent large numbers of individual clients on personal injury claims, as we are doing in this *In Re NFL Players' Concussion Litigation III*, MDL No. 2323, in which I am Lead Counsel in the action against the National Football League on behalf of the Opt-Out Plaintiffs and Co-Lead Counsel in the action against *Riddell, et al.* (the helmet manufacturers for NFL players). I am Co-Lead counsel in *Zimmer Durom Cup Hip Implant Products Liab. Litig.*, MDL No. 2158 (D.N.J.), and *Stryker Rejuvenate and ABG II Hip Implant Litig.*, MDL No. 2441 (D. Minn.); both of which are reaching final conclusion. I serve on the Plaintiffs' Executive Committee in *In Re Bard IVC Filter*

² For the past 42 years, Lieff Cabraser has represented plaintiffs exclusively, with consistent success, in an array of substantive areas, serving in leadership roles in class actions, mass torts, and other complex cases, in federal and state courts across the country. Our leadership in tort, consumer, investment and human rights litigation has generated verdicts and settlements of over \$62 billion, including Volkswagen Diesel Emissions Litig., Tobacco litigation for California cities and counties (\$12.5 billion) and the Commonwealth of Massachusetts (\$7.9 billion); reparations to Holocaust victims and their survivors (\$6.2 billion recovered from Swiss, German and Austrian Nazi collaborators); \$4.2 billion in recoveries for women injured by defective silicone gel breast implants; over \$1.3 billion to homeowners across America to repair and replace defective pipes and exterior siding; \$1.225 billion in the National Gas Antitrust cases; over \$1 billion to victims of failed implants in the *Sulzer Hip and Knee Implants Litigation*, MDL 1401 (N.D. Ohio); and over \$700 million to uninsured Californians overcharged for healthcare by major private hospitals.

Product Liab. Litig., MDL No. 2641 (D. Ariz.). I have also served on the Plaintiffs' Steering Committee in *In Re DePuy Orthopedics, Inc ., ASR Hip Implant Products*, MDL No. 2197 (N.D. Oh.) and in *In Re Zofran (Ondansetron) Products Liability Litigation*, MDL No. 2657 (D. Mass.) I have worked as trial counsel in mass tort MDLs such as *Yasmin and YAZ (Drospirenone) Marketing, Sales Practices and Products Liab. Litig.*, MDL No. 2100 (S.D. Ill.), and as chair of the discovery committee in *In re: Guidant Corp. Implantable Defibrillators Products Liab. Litig.* MDL No. 1708 (D. Minn.), and worked in *In Re Vioxx Products Liab. Litig.*, MDL No. 1657. We understand the interplay of issues and convergence of interests in products liability litigation, especially where the litigation is brought in both state and federal courts as occurred in the *Riddell* cases.

Products Liability Litigation Experience

My pertinent complex liability litigation, trial and settlement experience includes work for plaintiffs in leadership roles in *In Stryker Rejuvenate and ABG II Products Liab. Litig.*, (D. Minn.), MDL No. 2441 and in *In Re Zimmer Durom Cup Hip Implant Products Liab. Litig.*, MDL 2158 (D.N.J.), I served as the Plaintiffs' Co-Lead Counsel, representing all claimants with personal injury claims as a result of being implanted with an allegedly defective hip implant to almost the final and successful conclusion of that case. In *In Re DePuy ASR Hip Implant Products Liab. Litig.*, MDL No. 2197 (N.D. Ohio), I serve as a member of the Plaintiffs' Steering Committee. In *Yasmin and YAZ (Drospirenone) Marketing, Sales Practices and Products Liab. Litig.*, MDL No. 2100 (S.D. Ill.), I was prepared to proceed as trial counsel in one of the two first bellwether trials right before the cases settled. The case I was handling was in the state court coordinated litigation. I also served as Plaintiffs' Co-Lead Liaison Counsel in the Coordinated Special Proceedings *In re: Complete Cases*, JCCP No. 4521, pending in California Superior Court, Orange County before the Hon. David C. Velasquez as Plaintiffs' Liaison Counsel in the Coordinated New Jersey Mass Tort Program in *In re*

Ortho Evra Patch Products Liab. Litig., pending in Middlesex County, before the Hon. Jessica Mayer; Plaintiffs' Executive Committee in *In re: Bausch & Lomb ReNu MoistureLoc Products Liab. Litig.*, MDL No. 1785 (D.S.Ca.), as well as the Plaintiffs' Steering Committee in *In re: Medtronic Fidelis Products Liab. Litig.*, MDL No. 1905 (D. Minn.) and chaired expert discovery in *In re: Guidant Corp. Implantable Defibrillators Products Liab. Litig.*, MDL No. 1708 (D. Minn.). I was also Co-Liaison Counsel in the New Jersey Mass Tort Program in *In re: Reglan Product Liab. Litig.* (New Jersey Superior Court, Atlantic County).

I have more than 33 years' experience representing plaintiffs in mass tort, consumer fraud, products liability, medical negligence, and toxic contamination litigation in federal and state courts across the country. I received my J.D. in 1977 from Temple University School of Law. I have written scholarly and practical treatises and articles and lectured intensively on mass tort litigation, complex litigation and substantive tort law questions and have authored chapters and co-edited a book on proving and defending damages, *Proving and Defending Damages, A Fifty State Guide*, Wolters-Kluwer, published each year since 2008. Please see my Curriculum Vitae attached as Exhibit 2.

Lieff Cabraser Will Dedicate The Staffing And Resources Necessary To Prosecute This Litigation.

The *NFL Football Concussion Litigation III* is a team effort for my firm. In addition to the staff assigned to this case, which includes one paralegal, a senior researcher, and two nurse consultants, we have two attorneys available for the litigation, and many others if needed. Lieff, Cabraser, Heimann & Bernstein is extremely well-suited to play a lead role in this MDL litigation. As this application endeavors to demonstrate, I and my firm have the requisite criteria for appointment to a leadership position in this MDL: 1) knowledge and experience in presenting complex litigation, including plaintiffs in significant mass torts involving hip implants; 2) willingness and ability to commit to a time-consuming process; 3) ability to work cooperatively with

others; and 4) access to sufficient resources to prosecute this litigation in a timely manner for the common interests of Plaintiffs.

Plaintiffs' Steering Committee

Mr. Sohn and I plan to submit a schedule of the names of experienced counsel to serve this Court as a small Plaintiffs' Steering Committee. It is anticipated that the appointed leadership will work together to provide the Court with a proposed plan to reach resolution of many of the open and remaining cases that are outside of the Settlement Class. After fully evaluating the anticipated litigation expenses, time commitments and case filings, counsel recognizes the importance of filing preparing such a schedule to expeditiously and efficiently resolve the cases which have been pending before this Court.

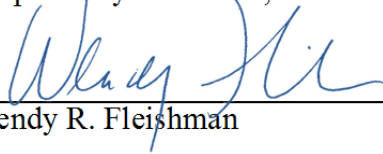
CONCLUSION

The MDL and individual plaintiff leadership experience summarized in this application demonstrates my commitment to the challenge of transforming complex litigation into cost-effective and efficient litigation, toward the goal of achieving economies of scale and net benefits for all plaintiffs. I acknowledge that none of the settlement and trial accomplishments that I or others proudly list on our applications to this Court could have been accomplished in isolation. These are the products of combined and coordinated efforts of multiple counsel. All true victories in complex litigation are team efforts, and we who have been privileged to amass the complex litigation experience, and enjoy the litigation success that we recount have done so as team members, not lone stars. I have been relied upon, over many years, by my colleagues in other firms to contribute my firm's professional and financial resources, and to provide leadership, scholarship, and advocacy in cases presenting challenging issues. I have consistently endeavored to perform these responsibilities, under the demanding conditions that always go with the MDL territory, and to give my best efforts to the broad array of tasks necessary to any successful MDL's function.

I pledge to do so on behalf of all plaintiffs in the Players Concussion MDL proceedings. I respectfully request that this Court appoint Mr. Sohn and me as Co-Leads in the ongoing phase III of this litigation.

Dated: August 22, 2019

Respectfully submitted,



Wendy R. Fleishman

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CERTIFICATE OF SERVICE

I hereby certify that on August 22, 2019, I filed the foregoing through the Court's CM/ECF system, which will provide electronic notice to all counsel of record and constitutes service on all counsel of record.

/s/ Wendy R. Fleishman

Wendy R. Fleishman